

LEGISLATIVE DRAFTING GUIDE



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LEGISLATIVE DRAFTING GUIDE

Conforming Laws to the General Administrative Code

Table of contents

Question 1. Introduction: Why is there a drafting guide about the General Administrative Code?.....	2
Question 2. What are “normative acts” under Georgian law, and what do I have to know about them to draft laws relating to government agencies?	3
Question 3. What does “administrative agency” mean under the General Administrative code of Georgia?	4
Question 4. What does “administrative act” mean under the General Administrative code of Georgia?	5
Question 5. What are the three types of proceedings agencies can use to issue an administrative act?	6
Question 6. What does “public information” mean under the General Administrative code of Georgia?	8
Question 7. What government meetings are open?	11
Question 8. How does someone appeal a decision of an administrative agency?.....	12
Question 9. How does the Administrative code provide for specialized agencies and functions?.....	15

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Conforming Laws to the General Administrative Code

1. Introduction: Why is there a drafting guide about the General Administrative Code?

1.1. What is the General Administrative Code?

1.1.1. In 1999 the Parliament of Georgia enacted the most progressive and sweeping administrative law reform in the former Soviet Union, over the objections of many entrenched bureaucrats. Combining elements of Dutch, German and American administrative law concepts, the new Code went in to effect at the beginning of 2000, and established fundamental new principles of transparency and accountability in government activity. The Code enshrined the fundamental notion that people affected by government action have the right to notice of that action, and the right to participate in the agency decision-making process. Among the most significant new provisions included were the “Freedom of Information” rules opening up virtually all government information to the public, and the “Open Meetings” provisions, making government sessions truly public meetings.

1.1.2. As this Guide will demonstrate, the Code sets forth procedures for how government agencies carry out their routine activities. In general the Code sets minimum standards for notice, hearings, and participation. Agencies are free to adopt procedures that provide for greater transparency or accountability. In some places the Code itself provides that its provisions may be modified by other laws. For the most part, however, the Code is intended to govern the behaviors of the government as the agencies carry out the tasks given to them by the Parliament.

1.2. Why is it important?

1.2.1. In helping Georgia strengthen the rule of law and reform its government practices, transparency and accountability are critical. Good administrative procedures can go a long way to assure that government practices are open to public scrutiny and that officials are accountable for their decisions. This in turn creates an environment in which it is difficult for corruption to flourish. The General Administrative Code provides such procedures.

1.2.2. Equally important is uniformity of standards and expectations across the government. Citizens should expect fair treatment from all agencies, and should know the basic rules governing agency actions. Similarly, attorneys who practice before government agencies, and government attorneys, should be able to rely on standard rules and procedures that apply from one agency to the next. Finally, courts beginning to exercise their newly acquired power to review government agency actions should have uniform standards to measure

the procedural fairness of agency actions. The General Administrative Code creates a process for all agencies to follow.

1.3. Why should I be familiar with it when I am writing a new law?

1.3.1. In helping a government agency draft new laws or amend its existing ones, it is almost impossible to avoid dealing with matters addressed by the General Administrative Code. Familiarity with the Code will making drafting easier and the final product better for these reasons, among others:

- 1.3.1.1. The Code contains relatively detailed procedures for a range of activities, which can be incorporated by reference without drafting new ones.
- 1.3.1.2. Every government agency must comply with the Freedom of Information provisions of the Code, and most must comply with the Open Meetings rules. Being familiar with these rules and building them in to agency statutes and regulations will avoid illegal or embarrassing actions by the agency.
- 1.3.1.3. Laws that include provisions that contradict or conflict with the Code create great uncertainty for the agency and the public, and must be resolved in the courts.
- 1.3.1.4. The Code provides the opportunity for special rules for different types of government functions, and knowledge of these provisions enables you to draft a customized law that is still consistent with the Code.

2. What are “normative acts” under Georgian law, and what do I have to know about them to draft laws relating to government agencies?

2.1. For drafting any legal act for a country, from constitutional amendments to regulations for stray dogs and cats, one of the most important first steps is to become familiar with the hierarchy of legal norms in that country. For Georgia, the place to start is the Law on Normative Acts (Published in the Gazette of the Parliament of Georgia, November 19, 1996). Adoption of this law was the most critical step towards sorting out the “normative anarchy”, in which the country found itself in early 90s after several damaging attacks on its legal system (post-soviet legal vacuum, military coup and military rules, restoration of the constitution of 1921 without changing other laws, etc.)

2.2. The Law on Normative Acts establishes a hierarchy of all of the legal acts that may exist in Georgia, creating a unified system of the country’s jurisdictions. Under the broad term “legal acts”, the law encompasses all kinds of acts, which are adopted (issued) by all state or local self-government authorities, which are binding and subject to execution by state power.

2.3. The law divides all of these legal acts in two broad categories:

2.3.1. **Individual acts**, which are valid for one occasion only (calling of parliamentary elections, appointment of a public official, awarding a license, etc.). These individual acts are the result of various governmental entities exercising their authority pursuant to the next category of laws.

2.3.2. **Normative acts**, which prescribe a general rule for permanent or temporary and recurrent application. The term applies to the full range of such acts, including the Constitution, international agreements, legislation by parliament or local government bodies, and regulations issued by government agencies.

2.4. The law does not go into details about the individual acts, because such acts are derived from particular normative acts. The individual legal act shall be adopted (issued) only on the basis of the applicable normative act and within the limits prescribed by that act.

2.5. The Law on Normative Acts, without affecting any substantive part of a draft law or regulation, deals with the technical aspects of all normative acts by defining the types and hierarchy of normative acts, and the general rules for drafting, adoption, publication, operation, registration, systematization and termination of them.

2.6. The law provides an exhaustive list of state bodies, which are authorized to issue (adopt) one type of normative act or another. It deals with fundamental issues like the level of authority of each state body for issuing normative acts as well as the purely technical (but no less important for drafting purposes) issues like the system of numbering of articles and sub-articles of a normative act.

2.7. The Law on Normative Acts deals in great detail with one of the fundamental issues in legislative drafting activity – what are the conditions for abolishing an old law and enactment of a new one, and how should the law be written to authorize executive agencies to issue regulations.

2.8. These and many other critical issues are dealt with by the Law on Normative Acts. Familiarity with its provisions is essential for effective legislative drafting.

3. What does “administrative agency” mean under the General Administrative Code of Georgia?

3.1. The first question you have to ask is: Am I drafting a law that deals with an administrative agency? If the answer to this question is “yes”, then you know you have to look at the General Administrative Code. What is an “administrative agency” under Georgian law? The General Administrative Code defines administrative agencies in four groups:

3.2. All national government agencies and institutions:

This group consists of all government agencies from the executive, legislative and judicial branches. At first sight it may seem strange that the law applies to the legislative and judicial branches, because exercise of administrative powers is not their primary responsibility. Moreover, the Constitution establishes the

separation of powers among the executive, legislative and judicial branches of the government, and their activities are dealt with by other legislative acts. However, the General Administrative Code contains provisions that apply to some of their activities, including the freedom of Information provisions, or when they adopt operating regulations for staff.

3.3. All local self-government and government agencies and institutions:

This group includes sakrebulos, local gameobas and mayor's offices. These government offices are often unaware of the General Administrative Code and its application to their activities.

3.4. Artificial persons created by public law (except for political and religious associations):

These include those entities established under the Law on Artificial Persons of Public Law, such as the National Energy Regulatory Commission, National Communication Regulatory Commission, State University, etc.

3.5. Any other persons that exercise public authority in accordance with law:

Exercise of public authority means an activity backed by the force of government coercion and not requiring consent of the other party. A natural or artificial person may be authorized to exercise public authority similar to an administrative agency. For instance, there are certain tasks that require specific knowledge (technical, scientific, etc.) that can be accomplished by private persons more successfully and with less expense. An example is when a private company that possesses sufficient expertise and facilities is authorized by the government to conduct compulsory automobile technical inspections.

4. What does “administrative act” mean under the General Administrative Code of Georgia?

4.1. Once you have determined that you are drafting a law for an administrative agency, you need to decide if the action involved in your legislation constitutes an “administrative act” under the Code. If it does, there are very specific procedures that apply, depending on the nature of the act.

4.2. All actions taken by administrative agencies are considered to be “administrative decrees”. This is the broadest description of an agency's action, and there are some parts of the Code that apply to this full range of activity. See, for example, Article 60 “The nullification of an administrative decree”.

4.3. Under the General Administrative Code, individual acts of Administrative Law are generally referred to as “administrative acts”. These are by far the most common actions taken by agencies, and the primary focus of the Code.

4.4. Normative acts created by agencies are referred to as “normative administrative decrees”. Such decrees are commonly called regulations, and are generally subject to the requirements of the Law on Normative Acts. Chapter 15 of the

General Administrative Code provides general procedures for the issuance of normative administrative acts.

- 4.5. According to the Code, individual acts are those that apply to a single person or limited number of persons. Individual acts establish, modify, terminate or verify rights or obligations of such person(s). Decisions on licenses, permits, or certifications, and government benefits are examples of such acts. Administrative acts shall be issued by authorized administrative agencies pursuant to their legislative authority or properly adopted regulations (normative administrative decrees).
- 4.6. Administrative acts are discussed in detail in Chapter 4 of the General Administrative Code. This chapter establishes the requirements that administrative decrees and acts must satisfy before their entry into force. For example, Article 53 provides the general requirement that all administrative decrees, including individual acts, must have a written justification. Other parts of the chapter discuss the invalidation and declaration of administrative acts as null and void.
- 4.7. The provisions of Chapter 4 are important for Georgian legislation, because until adoption of the Code, there were no uniform legal mechanisms to deal with such government actions. Even now there are acts that prescribe different procedures for various agencies for the adoption of administrative acts. As these various laws are re-drafted or amended, it is critical to bring them into conformity with the requirements of the General Administrative Code.

5. What are the three types of proceedings agencies can use to issue an administrative act?

- 5.1. The General Administrative Code provides for three types of administrative proceedings which agencies can use to adopt individual acts. These are **common**, **public**, and **formal**, administrative proceedings. Administrative acts are usually issued through common administrative proceedings. Chapter 6 of the Code sets forth the basic elements of an administrative proceeding, including the identity of the parties and other participants, deadlines, nature of the documents to be filed, and the agency decision-making process.
- 5.2. The **common administrative proceeding** provides the simplest procedures, and is the process to be used unless the governing law requires formal or public administrative proceedings.
 - 5.2.1. The common administrative proceeding provides for a process based on the elements of Chapter 6 of the Code, and allows for a great deal of flexibility in how the agency develops the information it needs to make a decision.
 - 5.2.2. The common proceeding is free from a number of the strict requirements of the formal and public administrative proceedings.

- 5.2.2.1. For instance, as a rule, in common administrative proceeding administrative agency is not obliged to inform interested party about commencement of the proceeding or to ensure their participation;
- 5.2.2.2. Witnesses and experts involved in common administrative proceedings are not obliged to provide the administrative agency with explanations;
- 5.2.2.3. The administrative agency is not required to conduct an oral hearing. However, it is required to render its decision based on examination and evaluation of all of the facts and circumstances of the case.
- 5.2.2.4. An Interested party involved in a common administrative proceeding may present evidence and motions, access case materials, and participate in the examination of case circumstances.

5.3. There are two cases when administrative acts are issued through **public administrative proceedings** (Chapter 9 of the Code):

- 5.3.1. *When this is required by the law.* Thus, this is an option for drafting a law for an agency. Individual governing acts may include this requirement for reaching decisions. The Code itself mandates the use of the public proceeding for decisions on the use of state or municipal property, and granting a license or construction and environmental permits, among others.
- 5.3.2. *When the act affects the interests of a broad group of people.* In such cases the decision to conduct a public administrative proceeding is rendered by the respective administrative agency. The procedures for making such decisions are described in the Code.
- 5.3.3. As you can see, public administrative proceeding should be used when a matter is of great public importance.
- 5.3.4. Public administrative proceedings are characterized by oral arguments and the participation of both interested parties and ordinary citizens in the issuance of administrative acts. Procedures for public proceedings include presenting supporting documents for public access, presenting opinions on such documents to the administrative agency, providing public access to draft administrative acts, as well as conducting oral hearings.
- 5.3.5. In a public administrative proceeding, as in a formal proceeding, the administrative agency shall conduct an oral hearing. Articles 110-112 of the Code provide the rules for these oral hearings for both proceedings.
- 5.3.6. Unlike common and formal administrative proceedings, any act issued through a public administrative proceeding shall be published. The agency has 10 days from the date of the hearing to issue the decision in the public proceeding.

5.4. **Formal administrative proceedings** are used only in cases specifically required by the law. So far no law requires a formal administrative proceeding for issuing an administrative act. Procedures for formal administrative proceedings are more like

trials than public proceedings, which are designed to involve a broader group of people, but with less formality.

5.4.1. Unlike the common administrative proceeding, in the formal administrative proceeding, as a rule, an administrative agency shall inform all interested parties about commencement of the proceeding and ensure their participation in the proceeding. As in the common administrative proceeding, parties involved in formal administrative proceedings are not obliged to participate in the proceeding. In the formal administrative proceeding witnesses shall testify and experts shall provide their evidence.

5.4.2. In a formal administrative proceeding no case shall be decided without oral hearing. Interested parties that are involved in the case shall be invited to such meeting. As in a court hearing, interested parties involved in formal administrative proceedings may express their opinions regarding case circumstances, witness testimony or expert evidence. The parties may also present any type of evidence, attend witness or expert questioning, ask them questions, access written expert evidence, attend site examination, and access case materials.

5.4.3. In the formal administrative proceeding, the resulting administrative act is issued within five days after conducting oral hearing.

5.5. In addition to the three types of administrative proceedings described above, the General Administrative Code defines two separate cases that are conditioned not by the type of administrative proceeding, but of the agency issuing the act. These are:

5.6. *Administrative proceedings of corporate administrative agencies.* This type of proceeding is defined separately due to large number of persons involved in decision-making. Chapter 7 of the Code includes articles dealing with rules for holding meetings, quorum and minutes of meetings. In all other respects provisions of common administrative proceeding apply, unless otherwise provided in the law;

5.7. *Rules for issuing administrative acts by independent agencies.* Chapter 9 of the Code specifies three cases when an independent agency shall be established to issue an administrative act. The independent agency shall be appointed through an open tender. The agency shall choose the type of administrative proceeding that is prescribed by the law for issuing such act.

6. What does “public information” mean under the General Administrative Code?

6.1. An overview of the freedom of information provisions and “public information”

6.1.1. Public information is any kind of information the government has, in paper, electronic or other format. The General Administrative Code gives the exact definition: According to Article 2(1-l), public information is an official document (including drawing, model, plan, scheme, photograph, electronically stored information, video and audio records), i.e. information held by a public institution, as well as the information received, processed, created or communicated by a public institution or its employee and related to their official duties.

6.1.2. Public information may be either open, that is available to any person to obtain or review, or closed. Any information that is not classified as secret according to the rules prescribed by law, is open. By law, public information is closed if it contains state, commercial or personal secrets. In addition, the information protected by executive privilege is also closed and not available for disclosure.

6.2. The importance of these rules for drafting legislation

6.2.1. While government agencies perform many different functions, and many of the sections of the Administrative Code may not apply, **every government agency holds public information!** Thus, drafters must think about the kinds of information the agency will be obtaining or generating and potential problems that may arise regarding its disclosure.

6.2.2. Some things to consider in drafting about public information include:

6.2.2.1. Is the information really needed for the agency to do its job?

6.2.2.2. Does any of the information legitimately fall within the “secret” category (state, personal or commercial)?

6.2.2.3. How best to make the information publicly available?

6.3. **State Secrets:** Classification of public information as a national security secret is regulated by the Law on State Secrets. Drafting about state secrets must conform to this statute.

6.4. **Commercial Secrets:** Information classified as a commercial secret includes information about a plan, formula, process or method having some commercial value or any other information that is used for production, preparation or processing of goods or for rendering services, and/or that represents innovation or significant achievement of technical creative work, or other information disclosure of which may diminish competitiveness of a person. (Article 27 of the General Administrative Code)

6.4.1. Commercial secrets are the property of natural or legal persons engaged in entrepreneurial activity. In the cases prescribed by law, such information may happen to be in the possession of a public institution. The public institution is obligated not to disclose such information to third persons. In effect, the only way to obtain a commercial secret is the prior consent of the person who owns it. In such cases the consent, notarized or authenticated by an administrative

agency, must be filed with the public institution along with the application for the information.

6.4.2. When a person submits commercial secrets to a government agency, they must designate the information as a commercial secret. The agency has the authority to agree or disagree with that designation. For instance, some kinds of information, about health or environmental hazards, for instance, can never be considered commercial secrets. An adverse decision by the agency can be appealed to a higher level within the agency or to court.

6.5. **Personal Secrets:** Information classified as a personal secret is information that contains personal data about a natural person. Personal data is information that enables identification, i.e. recognition of a person. Typically, such data consists of information about the health, finances or other private circumstances of an individual.

6.5.1. Ordinarily the private person makes the decision on classifying the data as a personal secret. An individual always has access to personal data about themselves, and must be provided copies of any such data without charge.

6.5.2. The government agency is obligated not to disclose the information classified as a personal secret (personal data), except in the cases prescribed by law – after a court decision or when the person gives their consent to disclosure. Otherwise, to obtain personal information about another, one needs the prior consent of the person whose personal secret is requested. In such cases the consent, notarized or authenticated by an administrative agency, must be filed with the public institution along with the application for the information.

6.5.3. It is important to remember that the rules for protection of personal secrets described above do not apply to government officials and to candidates nominated for official positions, as defined under the Law on Conflicts of Interest and Corruption in the Public Service. The personal data of these persons is open information and must be disclosed by the government agency without regard to the consent of the person.

6.6. **Professional Secrets:** According to the law, information that constitutes a personal or commercial secret of another person and that was made known to a person in connection with the latter's professional duties, is deemed to be the professional secret. Information that is not a personal or commercial secret of another person may not be a professional secret.

6.6.1. Only those individuals or organizations whose professional duties make it impossible to work without the knowledge of others' personal or commercial secrets (e.g. medical doctor, hospital, attorney) can possess "professional secrets".

6.6.2. While a person in possession of commercial or personal secrets of another may be compelled to provide that information to the government, they do not

have the authority to waive that classification or otherwise permit the public disclosures of such secrets.

6.7. Executive Privilege: The Code authorizes an administrative agency not to disclose the identities of public servants who may have participated in the preparation of decisions made by the political officials of the agency. This protection is not applicable to the political officials themselves, whose identify must be a matter of public record.

6.7.1. The purpose of the provision is to facilitate comprehensive and all-inclusive discussion of the issues before a particular decision is made, including the submission of various and diverse viewpoints. Such viewpoints may not be put forward if the public servant knows that his or her identity would be disclosed in connection with the particular issue.

6.7.2. The Code requires disclosure of any documents prepared during this discussion, but not the identity of the author of the document. This rule is different from the American and Western European approaches, where the identity of civil servants is public, but the content of internal deliberations are not.

7. What government meetings are open?

7.1. The law requiring open meetings is very simple. Article 32 of the General Administrative Code of Georgia provides that each “corporate public agency” shall hold its sessions openly and publicly, except as provided in Article 28. This means that when the session considers information containing state, commercial or personal secrets it can be closed. Note that Article 32 does not contain the language “unless otherwise prescribed by law” found in other articles (including Article 28).

7.2. The term “corporate public agency” is one that is used only in Chapter 3, on Freedom of Information. Article 27(b) defines it as a body consisting of more than one person for purposes of making decisions. This applies to a number of state agencies, but its most common application will be to local government bodies.

7.3. Under this broad provision, aside from exceptional cases, a government session is open and available to anyone interested in attending. Openness means that not only are the meetings public, but that the proceedings, minutes and other resolutions adopted at such sessions will be made public. This mandate is so strict, that decisions made at unlawfully closed meetings will be declared invalid by the courts.

7.4. Article 34 of the General Administrative Code spells out in detail the actions a corporate public agency must take regarding its meetings.

- 7.4.1. It shall publicly announce a forthcoming session at least one week in advance of the session.
 - 7.4.2. The public announcement shall include the following information: the place at which the session is to be held, time of the meeting and the agenda of the session.
 - 7.4.3. In addition, it should be announced whether the session will be open or closed.
 - 7.4.4. The announcement should indicate the name, position and telephone number of the public servant who may be contacted by the citizens with respect to the specific session.
 - 7.4.5. The public announcement typically means that the information shall be publicized through the media or posted at such a place where everyone will be able to access it freely. Normally, such place is a stand, bulletin board, etc. Also, in some cases prescribed by law, the administrative agency shall notify the interested persons of the forthcoming session through mail or by telephone.
- 7.5. An agency may change the time, place and agenda of the session or decide to close it only in the case of extreme necessity. Extreme necessity means existence of one of the following two conditions:
- 7.5.1. There is a danger of violation of the legislation (i.e. disclosure of secret information), and
 - 7.5.2. There is a threat to the functioning of the public agency in a democratic society.
 - 7.5.3. In such case the agency shall immediately announce the place, time and agenda of the meeting, and, if applicable, its decision to close the meeting.
 - 7.5.4. The agency shall make its decision to close the meeting based on roll call vote. Proponents and opponents of the closure shall be indicated in the meeting minutes.
 - 7.5.5. Either the entire meeting or just a part of it may be closed.

8. How does someone appeal a decision of an administrative agency?

8.1. There is no exhaustion requirement in Georgian administrative law

- 8.1.1. One of the unusual characteristics of Georgian administrative law is that a person who intends to appeal an administrative agency decision is not required to file a complaint with the agency before taking it to the court. In the United States and most Western European countries, a person is required to “exhaust” all of their administrative remedies (i.e. at the higher levels within the agency)

before seeking judicial review. Thus, in Georgia a person may go to court after losing at the lowest level of the agency.

8.1.2. This principle is based on Article 42 of the Constitution of Georgia, which provides that “each individual has the right of appeal to the courts to protect his rights and freedoms”. Under this article, any person may directly appeal to the court in case of violation of his rights or liberties. The drafters of the General Administrative Code and the Administrative Procedure Code believed that while this provision created an absolute right for judicial review of any administrative action, it also made it impossible to require a person to exhaust their remedies within the agency before going to court.

8.2. Bringing the appeal within the agency.

8.2.1. The mechanism for appealing an action of an agency is an “administrative complaint”. Chapter 13 of the General Administrative Code provides the general rules for such complaints.

8.2.2. When a person files an administrative complaint in an administrative agency, the challenged administrative decree (either individual or normative) is automatically suspended (unless the governing law provides otherwise—see Section 9 below). The same rule applies when an administrative (i.e. individual) act is appealed in court. This rule is one of the most important legal safeguards to protect citizens from arbitrary actions of administrative agencies. In special cases when automatic suspension of an appealed act may cause serious harm, the law allows operation of the act without interference. Such special cases are fully listed in Paragraph 2 of Article 184 of the General Administrative Code and Paragraph 2 of Article 29 of the Administrative Procedures Code. The decision to suspend or resume operation of an administrative act may be appealed immediately in court by any interested person.

8.2.3. The administrative agency and complaining person enjoy equal rights in the administrative proceeding. As a rule, the administrative agency that issued the decree has the burden of producing the documents and information that it based its decision on, within five days after the complaint is filed. The complaining person and other interested parties then must respond at least five days before the time scheduled for the hearing. Parties to the administrative proceeding may settle the case, and the agency may withdraw or revoke the administrative action taken on its own. However, if the reviewing authority believes the matter needs to be reviewed, or if an interested party seeks the nullification of an act, then the proceeding may continue.

8.2.4. The person who intends to appeal an administrative act should file an administrative complaint in one of the following administrative agencies:

8.2.4.1. The agency that issued the act, if there is a higher official who directs the official or subdivision that issued the administrative act;

8.2.4.2. The higher administrative agency, if the appealed administrative act was issued by the chief of an administrative agency;

8.2.4.3. The independent agency designated by the President of Georgia.

8.2.5. Based on above, in some cases an act may be appealed through two administrative levels, while in other cases only at one level. For instance, the decision rendered by the chief of some department within a ministry can be appealed to the respective minister, and later to the President. As for the minister's decision however, it can only be appealed to the President.

8.2.6. In some cases decisions of administrative agencies can be appealed only in courts. Such decisions include the acts issued by the President or by an independent agency. (These agencies should not be confused with independent regulatory bodies, such as Georgian National Energy Regulatory Commission. Decisions of those bodies made at the staff level shall be appealed to the full commission, and those by the full commission only in court.)

8.3. The benefits of seeking review within the agency first.

8.3.1. As noted above, under the Georgian Constitution, appeal of an administrative act can be made in either an administrative agency or the court. Nevertheless, drafters of the two Codes wanted to encourage appeal within the agency first. The Codes provide two significant benefits for seeking review within the administrative agency first.

8.3.2. There is an exemption from fees and/or duties for filing an administrative complaint within an administrative agency (i.e. appeal within the agency is free).

8.3.3. There is an exemption for a natural person (but not a corporation) from paying the state duty for filing an appeal in the first instance court if the complaint was first filed in an agency.

8.4. Other possible ways to assure review of a decision within an agency.

8.4.1. There are very good reasons for having a higher level within an administrative agency review a decision before that decision is taken to court. Such a process allows an agency to correct its own mistakes, thus reducing the number of cases that go to court. It also generally provides a better quality decision for the court to review if it is appealed to a court.

8.4.2. One approach that agencies can take either through legislation or regulations is to provide that the first decision of the agency is only a recommendation, not an actual decision affecting legal rights. The recommendation would be made to the higher official within the agency. If the official agreed, it would become the actual decision of the agency, subject to review. If the official disagreed, it would not be an appealable decision until such time as the official and lower level staff reached an agreement. This would guarantee that any decision was seen by at least two levels within the agency before it could be appealed to the courts.

8.5. A brief word about judicial review of administrative actions.

8.5.1. The greatest difference between Georgian administrative law and American administrative law regarding judicial review is the absence of any presumption in favor of the decision of the administrative agency. Georgia law follows the civil law model of placing the parties on an equal basis when they go to court. Thus the court considers the decision of the agency on a *de novo* basis.

8.5.2. According to the Administrative Procedure Code, the person bringing the action to court has the burden of proof. This will usually be someone adversely affected by the agency's decision. However, where the person is seeking to invalidate or nullify an administrative act, the Code provides that the agency has the burden of proof (Article 17 of the Administrative Procedure Code) to show that its decision is justified. This article also states that this rule can be changed by a governing law.

8.5.3. Under the rules of the Administrative Procedures Code, most administrative cases fall under the jurisdiction of raion courts. Especially important cases go to district courts, including administrative acts issued by high officials such as the President, ministers, or special representatives.

8.5.4. Under the Administrative Procedure Code, administrative appeals are treated differently from regular civil cases in two important respects.

8.5.4.1. In cases where an appealing party fails to pay the state duty for filing the case, the person may not be denied review and resolution of their case (although the person will still be liable for the duty). The general rule is that the court will not hear the matter until the duty is paid.

8.5.4.2. Decisions of lower courts in administrative appeals may be appealed or subject to review under the cassation procedure regardless of the value of the complaint. The general rule is that only complaints of a certain economic value can be appealed or be subject to cassation review.

9. How does the Administrative Code provide for specialized agencies and functions?

9.1. Over 50 different sections of the General Administrative Code expressly permit exceptions to its provisions. That is, they contain language which usually says "unless otherwise prescribed by law" or "...by law or regulations". This permits drafters of other laws to create exceptions for special circumstances that their agencies must deal with, either through writing it in the law, or adopting regulations.

9.2. Thus the General Administrative Code appreciates the necessity for exemptions from the general system, specially designed for specific agencies and concrete situations. However, the drafters of the Code assumed that the drafters of the particular laws which establish those exemptions, would also appreciate the

necessity of securing the uniformity and rationality of the administrative law system of the country as a whole. In that regard, they assumed that the drafters of the individual laws would create those exemptions only when absolutely necessary to achieve their objectives, and would do so with proper reference to the provisions of the Code authorizing those exemptions.

- 9.3. The most common provisions for exceptions are in those sections setting deadlines or establishing time limits for filing materials or making decisions. For example, Article 180 provides that an administrative complaint must be filed within one month of the action appealed from “unless otherwise prescribed by law”. Note that Article 183 provides one month for the agency to make its decision in the case “unless otherwise prescribed by law or applicable regulation”. It requires legislation to change the time for filing a complaint, but an agency could change the time-limit for reaching a decision by its own regulations, so far as it is consistent with the governing legislation.
- 9.4. Another area where exceptions are acknowledged is that dealing with participation of interested parties, i.e. those who can participate in the process although they may not be as directly affected. Article 95 deals in general with the participation of interested parties, and indicates that other laws may either mandate or bar their participation. However, Article 194 anticipates participation by interested parties in proceedings involving administrative complaints, and only permits exceptions to the general rule that their unwillingness to participate cannot cause the proceeding to be suspended.
- 9.5. Chapter 13, the Administrative Complaint section, contains quite a number of areas for exception, recognizing that the different size and structure of government agencies requires room for flexibility. A review of this section is critical in providing for internal agency appeals procedures.